

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:14cr6

vs.

DERIK EUGENE ROTHROCK,

Defendant.

Before:

THE HONORABLE JANET NEFF,  
U.S. District Judge  
Grand Rapids, Michigan  
Monday, July 14, 2014  
Sentencing Proceedings

APPEARANCES:

MR. PATRICK MILES, U.S. ATTORNEY  
By: MS. TESSA HESSMILLER  
The Law Building  
330 Ionia Avenue, NW  
Grand Rapids, MI 49501-0208  
616-456-2404

On behalf of the Plaintiff;

FEDERAL PUBLIC DEFENDERS  
By: MS. SHARON A. TUREK  
50 Louis Street, NW  
Suite 300  
Grand Rapids, MI 49503  
616-742-7420

On behalf of the Defendant.

REPORTED BY: MS. KATHY J. ANDERSON, RPR, FCRR

July 14, 2014

PROCEEDINGS, 11:04 a.m.

THE CLERK: All rise, please. This court is now in session. Please be seated.

THE COURT: Good morning, everybody.

MS. HESSMILLER: Good morning, Your Honor.

MS. TUREK: Good morning, Your Honor.

THE COURT: This is the date and time set for sentencing in case number 1:14cr6, the United States of America versus Derik Eugene Rothrock.

Counsel, may I have appearances and introductions, please.

MS. HESSMILLER: Good morning, Your Honor. Tessa Hessmiller representing the United States. And I'm here with Special Agent Kurt Schichtel from the FBI.

THE COURT: Thank you.

MS. TUREK: Good morning, Your Honor. Sharon Turek on behalf of Mr. Rothrock who is seated to my left.

THE COURT: Thank you. Also present in the courtroom this morning is United States Probation Officer Anna Pakiela.

Mr. Rothrock appeared before Magistrate Judge Timothy Greeley on March 7, 2014, and entered a guilty plea to a single count superseding felony information with a supplement, as well as with a forfeiture count, pleading guilty to the charge of receipt of child pornography which is contrary to 18 U.S.C.

1 2252A(a) (2) (A), and 18 U.S.C. 2252A(b) (1). The maximum  
2 potential penalties for that offense include a 15-year  
3 mandatory minimum sentence to a 40-year maximum sentence of  
4 custody, as well as a maximum potential fine of \$250,000.

5 In spite of the seriousness of this offense, it can be  
6 fairly easily summarized as follows: The offense behavior  
7 involved the defendant communicating via text messaging on a  
8 cell phone, as well as having sexual contact with girls he knew  
9 to be 15 years old or younger. In addition to the sexual  
10 contact, he requested and they sent photos of themselves to him  
11 of a sexual nature including photographs of their pubic areas  
12 and of them fully naked.

13 His texts to these girls were of a very salacious  
14 sexual nature.

15 The magistrate judge's report and recommendation was  
16 adopted on March 27, 2014. There is a plea agreement in this  
17 case and I accept it at this time and I find that the charge to  
18 which Mr. Rothrock entered a guilty plea adequately does  
19 reflect the seriousness of his actual offense behavior.

20 There is also a detailed presentence report.

21 Ms. Hessmiller, does the government have any issues  
22 involving the facts as recited in the report?

23 MS. HESSMILLER: No, Your Honor.

24 THE COURT: Ms. Turek, on behalf of the defendant, any  
25 factual issues with regard to the recitation of the report?

1 MS. TUREK: Other than what's already been noted, Your  
2 Honor.

3 THE COURT: Okay. And those were worked out with the  
4 probation officer, is that correct?

5 MS. TUREK: That is correct, Your Honor.

6 THE COURT: Thank you. Mr. Rothrock, a couple of  
7 questions for you. Have you read the presentence report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And have you discussed it thoroughly and  
10 carefully with Ms. Turek?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And as you sit here in the courtroom this  
13 morning, is there anything about the presentence report that  
14 you either don't understand or about which you still have any  
15 question?

16 THE DEFENDANT: No, no, Your Honor.

17 THE COURT: Now, Ms. Turek from the Federal Public  
18 Defender office has been appointed to represent you. Have you  
19 been satisfied with the work that she has done on your behalf?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. The presentence report contains a  
22 calculation of the guidelines and the advisory guidelines  
23 ranges as follows: The offense level is calculated at 39, the  
24 scoring in this case is a little bit unusual; although it is a  
25 single count information, it does involve three separate

1 victims, and because of that, it was scored in three separate  
2 segments. But the bottom line is that the probation officer's  
3 offense level, total offense level is 39. Criminal History  
4 Category is 5 owing to the sexual assault supplement, and those  
5 numbers of course place the defendant in Zone D of the grid  
6 where the incarceration range would be 360 months to life, but  
7 because the statutory maximum here is 480 months, the effective  
8 advisory guidelines range becomes 360 months to 480 months.  
9 The supervised release range is five years to life, the fine  
10 range is 25,000 to \$250,000. My understanding is that there  
11 have been no requests for restitution by any of the victims.  
12 Am I correct about that, Ms. Hessmiller?

13 MS. HESSMILLER: Yes, Your Honor.

14 THE COURT: Thank you. And there is a mandatory  
15 special assessment of \$100.

16 Now, there are no objections to the scoring, is that  
17 correct, Ms. Turek?

18 MS. TUREK: That is correct, Your Honor.

19 THE COURT: Thank you. My calculation of the scoring  
20 is just slightly different from that of the probation officer  
21 as a result of my policy differences with the Sentencing  
22 Commission. I do not score the two-offense level enhancement  
23 for use of a computer for reasons that I have explained on  
24 numerous occasions, but essentially, because it is clear that  
25 this offense is one that is in this day and age committed

1 exclusively, well, perhaps not exclusively, but almost, through  
2 the use of electronic devices like computers and Smart phones  
3 and so forth. And so my calculation of the total offense level  
4 is 37, which really doesn't have an effect on the overall  
5 scoring. I'm sorry, 38, I beg your pardon. Is that right,  
6 Anna, is it 37 or 38?

7 PROBATION OFFICER: It is, Your Honor, because an  
8 additional unit is added due to the lack of disparity between  
9 the three different offenses. 38 would be the correct.

10 THE COURT: Thank you. So the, the change in the  
11 offense level is to 38, Criminal History Category remains 5,  
12 and the rest of the numbers are all the same.

13 The custody advisory guidance, advisory range is 360  
14 to 480 months; the range for supervised release is five years  
15 to life; and the fine range remains at 25,000 to \$250,000.

16 There were no, nothing in any of the, in either of the  
17 sentencing memos or anything else that I saw indicated any  
18 request for a guidelines departure, is that correct,  
19 Ms. Hessmiller?

20 MS. HESSMILLER: Correct, Your Honor.

21 MS. TUREK: Yes, Your Honor.

22 THE COURT: Thank you. And I assume that the  
23 government does move for the one offense level reduction for a  
24 timely plea.

25 MS. HESSMILLER: Yes, Your Honor.

1 THE COURT: Okay. So we are left then with offense  
2 level, advisory guidelines based on offense level 38, Criminal  
3 History Category 5, incarceration 360 to 480 months, supervised  
4 release five years to life, fine range 25,000 to \$250,000.

5 Now, are counsel in agreement with the accuracy of  
6 those calculations?

7 MS. HESSMILLER: I'm a little unclear, Your Honor, on  
8 the 38 versus 37 that Ms. Pakiela was addressing, the lack of  
9 disparity because of the two victims. Perhaps a little  
10 clarification on the record would be helpful on that point.

11 THE COURT: I think the probation officer can probably  
12 explain that better than I can.

13 PROBATION OFFICER: Based on the multiple count  
14 adjustment that falls under counts on this case, he originally  
15 received only two units as a result of the difference in  
16 offense levels of -- the three counts technically had offense  
17 levels of 40, 40 and 38, correct? Yes. But because of the  
18 scoring change those numbers become less and it becomes an  
19 offense level of 38 because there is now three units instead of  
20 two. It would have been two given the difference in the  
21 scoring levels on each of those counts.

22 THE COURT: Does that make sense?

23 MS. HESSMILLER: It doesn't make sense to me because  
24 I'm not that familiar with that provision of it. But probation  
25 has a grip on it it sounds like. I don't know if Ms. Turek has

1 further questions on that or is satisfied with that  
2 calculation.

3 THE COURT: I'm kind of with you, Ms. Hessmiller. I  
4 would have deducted the two-offense levels from the total  
5 offense level of 39 to get to 37. But I'm not sure how that is  
6 impacted by the multiple count adjustment, if it is. And in  
7 the end, the advisory ranges remain the same.

8 PROBATION OFFICER: At 37, Your Honor, it would be 324  
9 to 405.

10 THE COURT: Okay. Can you then perhaps help us  
11 understand why it is 38 and not 37?

12 PROBATION OFFICER: I have a printout if that would be  
13 helpful for the parties to review.

14 THE COURT: Okay.

15 PROBATION OFFICER: But essentially with the multiple  
16 count adjustment, we have to look at the difference between  
17 each offense. And when you calculate it out, it was assigned  
18 two units at the original calculation when each count had the  
19 additional two points, you'll see paragraph 91 where it's 40,  
20 40, and 38 and it results in a number two units.

21 THE COURT: Okay.

22 PROBATION OFFICER: Because it's within a certain  
23 amount from each one. When you redo it with the different  
24 scoring, each one of those at 38, 38 and 36, each qualifies for  
25 a unit. Because it's within the highest adjusted offense level

1 is 38, plus the three, puts it at the 41, minus the three for  
2 38. And this is not helping at all.

3 THE COURT: I think, I think I see what you're saying,  
4 though. If we go back to paragraph 91.

5 PROBATION OFFICER: Yes.

6 THE COURT: And the 40, 40 and 38 adjusted offense  
7 levels become 38, 38 and 36.

8 PROBATION OFFICER: Correct.

9 THE COURT: Because of taking out the computer use.

10 PROBATION OFFICER: Correct.

11 THE COURT: And then go from there. So that leaves us  
12 at -- at paragraph 92, the greater of the adjusted offense  
13 levels becomes 38, right?

14 PROBATION OFFICER: Yes.

15 THE COURT: Then we increase that by two.

16 PROBATION OFFICER: By the number of units.

17 THE COURT: So it becomes 40.

18 PROBATION OFFICER: No. It becomes, there is three  
19 units added in the recalculation instead of two.

20 THE COURT: Why?

21 PROBATION OFFICER: I'm finding you that --

22 MS. TUREK: I think it's 3D1.4(a).

23 PROBATION OFFICER: Yes. Thank you, Sharon. When you  
24 look at 3D1.4, which is page 363 of the guidelines manual, the  
25 number of units indicates how many, increase in how many points

1 are added to the offense level. Two units you only add two  
2 points, and two and a half to three units you would add three  
3 points.

4 THE COURT: Well, then how do we get from two units to  
5 three units?

6 MS. TUREK: I think it's two -- may I have a moment,  
7 Your Honor?

8 THE COURT: Certainly.

9 PROBATION OFFICER: Your Honor, I think that's correct  
10 that it is 37.

11 THE COURT: Oh.

12 PROBATION OFFICER: We have a program that calculates  
13 it for us and I think it did not calculate it correctly. So it  
14 makes sense that it would be 37.

15 THE COURT: Okay. Let's go back then. At 37 and  
16 Criminal History Category 5, we are looking at 324, the  
17 incarceration range would be 324 to 405, the supervised release  
18 range remains five years to life, the fine range I think  
19 remains the same -- no, it becomes 20,000 to 200,000.

20 Now, again, are we comfortable with the accuracy of  
21 those calculations?

22 MS. HESSMILLER: Yes, Your Honor, if the Court is  
23 deleting the two points for the use of a computer.

24 THE COURT: Yes.

25 MS. TUREK: Yes, Your Honor.

1 THE COURT: Thank you. Ms. Turek, are you ready for  
2 your allocution?

3 MS. TUREK: I am, Your Honor. Your Honor, as I  
4 should, I'm going to be talking a lot about Mr. Rothrock. But  
5 before I do that, you know, that does not mean that he nor I  
6 consider the offense, the conduct anything less than  
7 reprehensible. And it's detailed in the presentence report.

8 In this case, Your Honor, in a lot of ways it does not  
9 surprise me that Mr. Rothrock appears here today,  
10 unfortunately. In the sentencing memo as in the presentence  
11 report, there are some details as far as his upbringing, and I  
12 did attach a report from Pine Rest report back when  
13 Mr. Rothrock was 13 or 14 years old.

14 That I think just really touches the iceberg as far as  
15 how bad things were for him when he was growing up. This is  
16 not a case of someone being in poverty, although there was  
17 that; this is a case where someone was born into a family with  
18 a history of mental health issues. He was born into a family  
19 who neglected him, who sexually abused him, who physically  
20 abused him, all the, all the things that you don't associate  
21 with a nurturing environment.

22 Unfortunately, many of the reports that could have  
23 provided even additional detail are not available. We had  
24 contacted Child Protective Services. We had lengthy  
25 discussions with staff, and they were unable to find the

1 records, although they don't dispute them, they just no longer  
2 have them. We had also contacted the juvenile court, and they  
3 also believe that they no longer had the files.

4 But we do have some of the information from earlier  
5 presentence reports which Ms. Pakiela included in her report.  
6 We have the Pine Rest records, and we have, at least I have had  
7 the opportunity to discuss in more detail with Mr. Rothrock  
8 some of his experiences as a child. Although I must say that  
9 he doesn't like to talk about it, and frankly, the only way I  
10 was able to get more detail is, I know it was difficult for him  
11 to talk about it, so I asked him to write me a letter and just  
12 talk about some of the things that occurred in his lifetime.

13 And I think most troubling is the sexual abuse that  
14 was going on within his family. The most devastating thing was  
15 to hear that Mr. Rothrock's own mother would masturbate him and  
16 arouse him, which is something that I have never, as with the  
17 many clients I have had and the horrendous circumstances that  
18 they have had to live their lives, I have never had anything  
19 like that or heard anything like that.

20 But it's more than that, Your Honor. When  
21 Mr. Rothrock was born it's clear that he suffers from ADHD. It  
22 was true back when the Pine Rest record was made when he was 14  
23 years old; it's true today. If you try to have a discussion  
24 with Mr. Rothrock, you have to be aware of that, and you have  
25 to go over things a number of times because it is very hard for

1 him to maintain focus.

2 There is substance abuse, alcohol, drugs. There were,  
3 was mental illness. His, and it's hereditary; both his  
4 maternal grandmother and his mother have a history of mental  
5 illness.

6 And so with that as a back drop, this young man was  
7 raised, born and raised into that household, although, he was  
8 abandoned a lot of the time too. And that resulted in even  
9 being in more abusive, being in harms way any number of times  
10 because his mother would often leave him with strangers; even  
11 when she was in a relationship with an individual, his  
12 stepfather, for instance, Mr. Goudy, was abusive, was  
13 physically abusive.

14 So that's kind of the back drop. And so with that,  
15 Mr. Rothrock has had the history that he has.

16 He understands that he has issues with sexual  
17 relationships and not being able to respect boundaries. But I  
18 don't think he's understood how to deal with that. He knows he  
19 needs treatment. He also suffers from, as I've said, mental  
20 illness. He suffers from depression on a regular basis still.  
21 That was the circumstance back in 1994 when he was at Pine  
22 Rest, and that's still the situation today.

23 He has, he has some limitations on his ability to read  
24 and write. And I think he's often been at a loss as far as how  
25 to live his life in a way that is appropriate and in a way

1       that's respectful to others.

2               He is, he understands that the Court has no choice but  
3       to impose a significant period of incarceration today, and he  
4       accepts that. But he wants this Court to know, he wants you to  
5       know that he is open to treatment, that he wants treatment, and  
6       he wants to still try to make a life. There was a two-year  
7       period I believe from 2010 to 2012 where he was having some  
8       success. This was after he was released from prison after a  
9       parole violation. He got married, and he was doing, there  
10      seems to be no criminal history. He was working, and he held  
11      that job for two years. When his marriage broke up, it seems  
12      like the wheels kind of broke off and Mr. Rothrock began using  
13      drugs and alcohol on a more frequent basis, and all the past  
14      history of his difficulty with sexual boundaries came back.  
15      And it has led him to where he's at today.

16             I have asked this Court to consider a variance in this  
17      case. I think the abuse that he suffered as a child, in  
18      addition to the other circumstances that were present, the  
19      mental illness, the learning disability, the neglect and  
20      abandonment by his parents, not just his mom at times but his  
21      father has never been part of his life, all those circumstances  
22      have contributed to the person that Mr. Rothrock is today. I  
23      think Mr. Rothrock himself is a strong individual. I think  
24      that he is sincere when he says that he wants treatment. I  
25      know that he has made attempts in the past to live a life that

1 society expects of him. I think he can again one day do that  
2 with the appropriate treatment, and I would ask this Court to  
3 consider a variance from where we are at in the guidelines  
4 right now, Your Honor, so that Mr. Rothrock will one day be  
5 able to establish, reestablish himself in the community and  
6 live a law abiding life and find some happiness for himself.  
7 And I know that -- and by saying that I don't, again, want to  
8 trivialize what occurred, but I would like to see at some point  
9 Mr. Rothrock find some peace within himself and be able to live  
10 on the outside and find some happiness after he's paid his debt  
11 to society. Thank you.

12 THE COURT: Thank you, Ms. Turek. I have to say that  
13 it's difficult to disagree with your evaluation of how  
14 Mr. Rothrock got here. His history and background are truly  
15 tragic. But I want it to be clear as well that my concerns are  
16 that he is here and he is who he is, and the dangers that he  
17 presents are not theoretical. I mean they are demonstrated.  
18 And I just -- I do want the record to be clear that I, as I  
19 said, I understand your position as his advocate, but also that  
20 in terms of applying those circumstances to a potential  
21 variance simply flies in the face of what I consider to be my  
22 duty to protect the public, and particularly to young girls and  
23 women. The history that Mr. Rothrock presents with in terms of  
24 his inability to control his behavior and make it conform to  
25 even the most basic expectations is very frightening. But I

1 do, I do credit your argument and understand what a difficult  
2 position we're all in here.

3 MS. TUREK: And I appreciate that, Your Honor. And I  
4 certainly am well aware that before you came out on the bench  
5 here today that you would have those concerns. I think anyone  
6 reading Mr. Rothrock's criminal history certainly would. And  
7 they are well-founded; I can't disagree with that. But I would  
8 also ask you to consider that I think even the mandatory  
9 minimum in this case, and I'm not suggesting that is where the  
10 sentence should be, but even that sentence is a significant  
11 period of time where hopefully Mr. Rothrock will be undergoing  
12 a lot of treatment to address not just the substance abuse  
13 issues, the mental health issues, the mental illness issues,  
14 but the sexual behavior issues that have led to that history of  
15 assault.

16 So in that vein, Your Honor, with that anticipation of  
17 a significant period of incarceration to go with treatment, I  
18 think a variance of some sort would still, might still be  
19 appropriate in this case, even given his history, with the idea  
20 that he's going to be serving a long time of incarceration.

21 But also that he will be undergoing treatment, and on  
22 supervision would be under rather tight constraints, I would  
23 imagine. So with that I would ask the Court, I would ask you  
24 to still consider a variance of some amount in this case.

25 THE COURT: Thank you for your comments.

1 MS. TUREK: Thank you.

2 THE COURT: Mr. Rothrock, at this point, and I'm sure  
3 Ms. Turek has talked with you about this, but at this point if  
4 you wish to speak in your own behalf to tell me anything that  
5 you think I should consider before imposing sentence, you  
6 certainly are entitled to do that. This is in fact your  
7 sentencing, and if there's something, anything at all that you  
8 wish to add, you may come to the podium with Ms. Turek.

9 THE DEFENDANT: I can't explain what I did. I am  
10 sorry for what I did. Just Saturday I just found out my  
11 12-year-old daughter got raped. I feel as a victim as well as  
12 the predator in this situation. I don't clarify or justify or  
13 plead for any mercy or anything because what I did was wrong.  
14 I'm sick and tired of living the way I live. I thought I had a  
15 right life when I was with my wife. I just fell off. There is  
16 no explanation to it. I mean I feel sorry for the victims. I  
17 apologize to them. The people who are involved, time wasted in  
18 the court, the people I hurt. Mainly I let my daughter down.  
19 My family won't talk to me no more because I'm admitting and  
20 I'm putting everything out there as it was. Tired of being in  
21 denial about what my family is going through.

22 I'm 35 years old. I mean, I should have grown up  
23 before I went to prison the first time.

24 I don't know. I'm sorry. I mean I know that ain't  
25 the best of words, the brightest words to say, but I really am;

1 for the first time, I am. You know, I got a lot of the  
2 burdens; I got a lot of problems going on in my life; I've got  
3 a lot the hurts, habits, and hang ups and they have been there  
4 for years, and I thought I had them under control but I guess I  
5 didn't. That's all I can really say.

6 THE COURT: Well, what I can say is that everybody  
7 involved in this case hopes that you can find the kind of  
8 treatment that you need that will help you but make all of us  
9 safer as well. And I don't know what the outcome will be. And  
10 I don't know whether the treatment you receive will benefit  
11 you. But I certainly hope so. Thank you.

12 THE DEFENDANT: Thank you.

13 THE COURT: Ms. Hessmiller.

14 MS. HESSMILLER: Your Honor, Mr. Rothrock really  
15 presents every parent's nightmare. He's age 34 at the time,  
16 prior convicted sex offender, goes out for a long weekend to  
17 visit a friend somewhere in Michigan and in a span of four days  
18 accumulates three different victims ages 12, 14 and 15, two of  
19 whom he had sex with.

20 Mr. Rothrock knew he was a prior convicted sex  
21 offender. It's easily found on the Internet. Anybody with a  
22 Smart phone can figure out someone is a prior convicted sex  
23 offender, and on this long weekend to this town in Michigan,  
24 Mr. Rothrock used a false name, he set up a false Facebook  
25 profile under that false name, and he told these three victims

1       that he was 19 or 21 years old.

2               The third victim, minor number 3, was the only reason  
3       that this came to light because minor number 3 was sitting in  
4       her bedroom talking on the phone texting and sending sexually  
5       explicit pictures of herself to the defendant when a parent  
6       figure walked in and minor number 3 threw the phone, the parent  
7       picked it up and figured out what was going on. From that  
8       point onwards, the investigation was able to find minor number  
9       1 and minor number 2 who had not come forward on their own.

10              So but for the parenting of minor number 3's parents  
11       being able to find minor number 3's phone, these other victims  
12       may not have even been known to law enforcement.

13              Even if Mr. Rothrock had been arrested and his phone  
14       had been searched, he was using an application called Photo  
15       Vault which is a secure way to password protect photos and even  
16       provides a decoy password so that if someone asks for the  
17       password to Photo Vault a user can give a decoy password and  
18       show a separate set of photographs. Inside that Photo Vault  
19       account were not only the sexually explicit images of these  
20       three victims but also of numerous other young women, unknown;  
21       they were not pre pubescent but young women, possibly  
22       teenagers, possibly younger or slightly older.

23              While Mr. Rothrock was talking to minor number 3 while  
24       she was in her bedroom late on the night of July 22, 2011,  
25       Mr. Rothrock asked her by phone, was she a virgin, and where

1 does she live. The answers to both of which minor number 3  
2 gave Mr. Rothrock over the phone.

3 This happened three months after the defendant was  
4 acquitted at a criminal sexual conduct trial for having  
5 multiple times having sexual intercourse with a 15-year-old  
6 girl.

7 This is not an isolated incident. This is not a  
8 one-time act of misjudgment. But this is a persistent,  
9 selfish, narcissistic desire for sexual gratification from  
10 easily manipulable young girls. These are the type of girls  
11 who told Mr. Rothrock that they were having trouble with their  
12 family, were over the moon to be told that they were cute or  
13 sexy by Mr. Rothrock over text message. It didn't long for one  
14 of the minors to say I love you, and Mr. Rothrock to say back  
15 love you too. One of the minors even texted to her friend, "He  
16 thinks I'm cute. Tehehe, I love him." These were easy  
17 pickings for Mr. Rothrock in his desire to fulfill his sexual  
18 gratification from the easiest possible victims.

19 Maybe Mr. Rothrock was sexually abused, and the  
20 government certainly doesn't argue to the contrary. But now  
21 Mr. Rothrock is sexually abusing others in multiples.

22 I know Your Honor has already made a decision on the  
23 use of the computer. But this case may be different from the  
24 routine case of receipt of child pornography where everyone who  
25 receives child pornography now receives it over the computer.

1 In this case, the guidelines were calculated using the  
2 production of child pornography guidelines under 2G2.1 rather  
3 than the receipt of child pornography guidelines under 2G2.2.  
4 And the use of the computer enhancement is slightly more  
5 specific in the production of child pornography guidelines  
6 under 2G2.1 in that they require in order for the two-point  
7 enhancement to apply, it requires the person who is sexually  
8 exploiting children to use a computer to entice and solicit a  
9 child into sexually explicit conduct. And I point this out,  
10 Your Honor, because that enhancement applies here and I think  
11 it's important that it does apply here because the use of a  
12 computer really does enhance and broaden the reach of sex  
13 offenders like Mr. Rothrock. Because children now carry around  
14 Smart phones or text message enabled phones, using a computer  
15 such as a Smart phone to get into a child's house, to get into  
16 a child's bedroom and get her to send sexually explicit photos  
17 back really does broaden the scope of sex offenders and it  
18 makes this crime so much easier to commit rather than grooming  
19 a child and having in-person sexual contact and access to a  
20 child.

21 So in addition, Your Honor, Mr. Rothrock has had  
22 multiple opportunities to correct his course, not the least of  
23 which was an eight and a half year term in prison, followed by  
24 a parole violation for having a sexual relationship with a  
25 minor and prohibited sexual contact with children, followed by

1 three and a half more years in prison, and release from prison  
2 in 2009.

3 Followed shortly by the CSC trial in 2012, and  
4 followed immediately by these July 2013 offenses.

5 So, Your Honor, I would request that the Court does  
6 include the two-point enhancement for use of a computer because  
7 they are calculated under the production of child pornography  
8 guidelines rather than the standard receipt of child  
9 pornography.

10 In the alternative, Your Honor, I would ask that the  
11 Court impose an above guideline sentence justified for the need  
12 to specifically deter this defendant and generally deter others  
13 from using the same means and mechanisms to sexually exploit  
14 children. I see Your Honor paging through the book. Did you  
15 need me to clarify anything about the, what I was referring to,  
16 Your Honor?

17 THE COURT: Well, what I guess what I would ask you,  
18 and in my determination to reduce the scoring by the two  
19 offense levels for enhancement for the use of a computer, which  
20 is in line with my, as I indicated earlier, in line with my  
21 policy that I set out pretty extensively in U.S. versus Inman  
22 which was about a year or so ago, I guess what I would ask of  
23 you is since this is a receipt case, whether you have some  
24 authority for applying 2G, what is it?

25 MS. HESSMILLER: 2.1, Your Honor. Yes, Your Honor, I

1 do. And the presentence report actually in each of the  
2 segments of calculating the guideline range refers to the cross  
3 reference in 2G2.2(c) which states that, "If the offense  
4 involved causing, transporting, permitting, or offering or  
5 seeking by notice or advertisement, a minor to engage in  
6 sexually explicit conduct for the purpose of producing a visual  
7 depiction of such conduct or for the purpose of transmitting a  
8 live visual depiction of such conduct, apply 2G2.1."

9 So even for the superseding information, which is  
10 encompassed in paragraphs 68 through 65 of the presentence  
11 report, it does note that the guidelines are calculated in this  
12 case in all cases under 2G2.1.

13 And so the use of a computer enhancement that's  
14 applied in paragraph 71 is actually the use of the computer  
15 enhancement from the 2G2.1 child pornography production  
16 section.

17 THE COURT: Well, it's an interesting argument, and it  
18 may well be the better application of the guidelines in this  
19 case. However, given the seriousness of the advisory range  
20 already, which at 324 to 405 months is not significantly below  
21 the 360 to 480 -- I wish we had had this. I should have given  
22 you the opportunity to respond earlier when I was talking about  
23 the scoring. But in any event, this is on the record and if  
24 there is any question about it at some later time, then it can  
25 be resolved then. But I really, again, the guidelines which

1        apply in child pornography cases are so, in my view, excessive,  
2        and we end up with these numerous enhancements that may or may  
3        not be accurately applied to the behavior in question, I'm  
4        going to deny the objection and leave the scoring as it is.  
5        And in the event that there is some correction of that at some  
6        higher level, that's fine with me. But I do appreciate your  
7        comments. It's certainly food for thought.

8                MS. HESSMILLER: Thank you, Your Honor.

9                THE COURT: Thank you. Well, the guidelines as they  
10        have been outlined and argued here are in fact advisory, but I  
11        do have to consult them and give them consideration in reaching  
12        a sentencing decision which has to be reflective of the  
13        underlying duty to impose a sentence which is sufficient but  
14        not greater than necessary to comply with the purposes of  
15        Section 3553(a).

16               And the sentencing calculus is in my view something  
17        that reflects the law in many different contexts, and that is  
18        that there must be some balance. And the balance that the  
19        statute talks about first starts with looking at the crime  
20        itself, and its seriousness, and then at the person who  
21        committed the crime.

22               And here child pornography offenses in terms of their  
23        seriousness are almost always very serious offenses. But the  
24        facts of this case really do make it stand out from others. In  
25        the first instance, the defendant had met these young girls at

1 this apartment complex. He contacted them via phone, his, the  
2 language in his texts were almost painful to read when you  
3 realize that these girls were the oldest was 15. And the  
4 sexual contact, again, girls, the oldest of whom is 16. He  
5 knew how old they were, approximately how old they were. He  
6 admitted that in his plea.

7 His previous criminal sexual conduct conviction in  
8 state court leading to, what, six or eight years of  
9 incarceration, and very, very soon after his release on parole  
10 he was right back at the same kind of behavior, assaulting,  
11 sexually assaulting young girls.

12 So all of this behavior adds to the seriousness of  
13 this offense because it is reflective of the fact that  
14 Mr. Rothrock is prone to acting out on these, I don't know  
15 whether they are impulses or what they are, but he acts out on  
16 his -- his interest, his sexual interest in young girls. And  
17 on a scale of one to ten in offenses for receipt of child  
18 pornography, this one is at ten or above. I honestly have not  
19 seen one more serious than this.

20 So that's the offense.

21 The history and characteristics of the defendant  
22 really don't, don't balance that seriousness. Often that  
23 happens. We see a serious offense but a person whose life  
24 experience and behavior can balance that out. And that's not  
25 the case here. Mr. Rothrock is a 35-year-old married man, has

1 one child who is a young daughter whom he does not see. He's a  
2 9th grade dropout. His criminal history started at age 13.  
3 And I, again, as I indicated to Ms. Turek, I do not for a  
4 moment downplay the difficulty of his life in which he had no  
5 stability; his father was not in the picture, his mother was  
6 mentally ill, he was sexually abused, he moved frequently,  
7 there was contact with Child Protective Services, there was  
8 family violence. You can go on and on about Mr. Rothrock's  
9 background. It's tragic.

10 But you lay that alongside of the fact that his prior  
11 sex offense for which he was supplemented occurred when he was  
12 just 17. And at that point he had had sex with a 13-year-old  
13 girl, served eight years in prison and violated almost  
14 immediately.

15 His life has been, as far as I can tell, out of  
16 control pretty much his entire life. The government's  
17 sentencing memo concludes that Mr. Rothrock is a sexual  
18 predator, and frankly, that's hard to refute on these facts.  
19 That's a phrase that has been used in other cases. I think  
20 sometimes improvidently but in this case I think it is really  
21 right on. And there is violence throughout his history, both  
22 against him and by him. And so as Ms. Turek says, it's not  
23 surprising that he should be here under these circumstances.  
24 It's terribly sad. But it is not at all surprising.

25 After that attempt at balance, the statute goes on to

1 talk about what purposes do we hope to serve with sentencing.  
2 And the three that stand out in this case, I think all of them  
3 really apply, all five of them apply, but the three that stand  
4 out are punishment, deterrence, and protection of the public.

5 Deterrence. Mr. Rothrock needs to be removed from  
6 society to prevent him from preying on young girls. We need to  
7 protect young girls from further crimes of Mr. Rothrock, and we  
8 need to punish him for the crimes that he is here for. He  
9 obviously also needs treatment, and at some point I would hope  
10 that we could through treatment provide him with some glimmer  
11 of a respect for the law.

12 So the question of whether the guidelines sentence,  
13 the guidelines range is appropriate, is this a heartland, mine  
14 run case. Do the guidelines reflect the statutory factors.  
15 And I don't think so. I don't think this is a heartland case.  
16 I think this is a really extraordinary case. And my own  
17 independent view of the sentencing factors and all of the  
18 sentencing file, starting with the original indictment, which I  
19 think had six counts, reduced down to the superseding or second  
20 superseding information suggests to me that the guidelines, as  
21 high as they are, at 324 to 405 months, really don't achieve  
22 the purposes set out in the statute. And, you know, the  
23 request for a variance based on all of those factors in his  
24 background do not, cannot trump the fact that Mr. Rothrock is a  
25 serious danger to the public, and particularly to adolescent

1 girls. And, again, what I think is the most important  
2 statutory factor is protection of the public. I think we have  
3 got to remove him for a very long time from having any access  
4 to young girls.

5 And so I am going to depart above the guidelines for  
6 those reasons. And pursuant to the Sentencing Reform Act of  
7 1984, it's my sentence that Mr. Rothrock serve 480 months  
8 incarceration to be followed by supervised release for the rest  
9 of his life subject to the standard conditions of reporting and  
10 remaining law abiding. You know, in terms -- I just want to go  
11 back one minute. In terms of the length of the sentence, I  
12 would point out that Mr. Rothrock is a young man. He's only  
13 35 years old. And the harm, the pain that he has caused in  
14 that fairly short period of time suggests that the longer we  
15 can keep him away from society in general and girls in  
16 particular, the better we are.

17 So the supervised release subject to the standard  
18 conditions of reporting and remaining law abiding. There were  
19 some additional conditions. We provided an order regarding  
20 those for counsel and Mr. Rothrock to review prior to this  
21 hearing; both Mr. Rothrock and Ms. Turek have signed them  
22 indicating they reviewed them and understand them. And I'm  
23 signing that order for entry right now.

24 The fine in this case is waived. As indicated  
25 earlier, restitution is not an issue. I order the mandatory

1 special assessment of \$100.

2 With regard to the Bureau of Prisons recommendation,  
3 it's very clear that Mr. Rothrock needs intense programming in  
4 many areas, including mental health and substance abuse  
5 programming. He needs educational and vocational programming.  
6 The latter he should at least make progress towards earning his  
7 GED.

8 Is there any request for placement recommendation,  
9 Ms. Turek?

10 MS. TUREK: No, Your Honor.

11 THE COURT: Thank you. The second superseding  
12 information was a single count, but does the government move to  
13 dismiss the counts of the underlying indictment?

14 MS. HESSMILLER: Yes, Your Honor.

15 THE COURT: That's granted. There is an indication in  
16 the, I said second superseding felony information. It was just  
17 a superseding, but there was a forfeiture allegation but I  
18 don't see any order.

19 MS. HESSMILLER: Your Honor, I believe a preliminary  
20 order of forfeiture was entered.

21 THE COURT: I don't even see that, Ms. Hessmiller.  
22 Was it entered, Rick?

23 THE CLERK: That's correct. On April 7th.

24 THE COURT: April 7th, okay. We will need a final one  
25 then at the government's convenience.

1           Are there any objections to the sentence that I have  
2           just announced, anything that's not already on the record which  
3           would argue that sentence should not be imposed as I've  
4           indicated?

5           MS. HESSMILLER: No, Your Honor.

6           THE COURT: Ms. Turek.

7           MS. TUREK: No, Your Honor.

8           THE COURT: Thank you. Mr. Rothrock, we do need to  
9           talk about your appellate rights which have been primarily  
10          waived in this case. I'm going to look for that paragraph. If  
11          I recall correctly, it's pretty extensive. It's paragraph 13  
12          of your plea agreement. It is a pretty extensive waiver of  
13          your appellate rights with regard to the sentence I have just  
14          announced. But to the extent you retain any appellate rights,  
15          there are two things you need to understand this morning.  
16          First of all, I guess it's afternoon now, first of all, a  
17          judgment is going to be entered on my sentence probably later  
18          today, and you'll have 14 days from when the judgment is  
19          entered to make up your mind whether you wish to pursue an  
20          appeal. And this is something you should carefully discuss  
21          with Ms. Turek. But you must tell her. You must let her know  
22          what you want to do with regard to an appeal. Secondly, if you  
23          do wish to pursue an appeal, Ms. Turek will have the obligation  
24          to represent you in that proceeding going forward. Do you  
25          understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Before I remand you to the custody  
3 of the federal marshal I do want to say to you that imposing a  
4 sentence like this under these circumstances is very difficult.  
5 I'm sure not as difficult as it is for you facing a long, long  
6 time. But I hope that you can find some benefit, some  
7 redemption in the time that you spend with the Bureau of  
8 Prisons. I honestly can't imagine living in your head. I  
9 think it must be very, very difficult. And I hope that at some  
10 point you can come to grips with that and be, as Ms. Turek  
11 indicates, someone who can find some measure of joy in life.

12 I am sorry that our society has failed you all these  
13 years, and we have. I think we have had a number of  
14 opportunities to make your life better and we didn't. And now  
15 we are left with someone who is, as I said earlier, very  
16 dangerous. And so I, I hope you can find some measure of  
17 relief in the future. If there is nothing further,  
18 Ms. Hessmiller.

19 MS. HESSMILLER: Nothing further, Your Honor. Thank  
20 you.

21 THE COURT: Ms. Turek.

22 MS. TUREK: No, Your Honor. Thank you.

23 THE COURT: The defendant is remanded to the custody  
24 of the United States marshal, and we are adjourned.

25 THE CLERK: All rise, please. This court is now

1 adjourned.

2 (Proceedings concluded, 12:12 p.m.)

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## REPORTER'S CERTIFICATE

I, Kathy J. Anderson, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Kathy J. Anderson

Kathy J. Anderson, RPR, FCRR

U.S. District Court Reporter

412 Federal Building

Grand Rapids, Michigan 49503